Department of State Health Services
Council Agenda Memo for State Health Services Council
February 26-27, 2014

Agenda Item Title: Amendments to rules concerning the licensing and regulation of hospitals

Agenda Number: 5.c

Recommended Council Action:

_____For Discussion Only

___X__For Discussion and Action by the Council

Background:

The Health Facility Licensing Program is within the Regulatory Licensing Unit, Health Care Quality Section, of the Regulatory Services Division. The program regulates health care facilities to ensure quality care is provided to the people of Texas.

The program issues licenses to abortion facilities, ambulatory surgical centers, and general and special hospitals, and conducts inspections to determine compliance with the rules. Findings of non-compliance may result in referral for escalated enforcement action. There are 423 licensed general hospitals and 227 licensed special hospitals.

The DSHS regulatory budget and source of funding is General Revenue and program costs are offset by licensing fees.

Summary:

The purpose of the amendments is to address statutory requirements for hospitals and make related modifications resulting from legislation passed during the 83rd Legislature, Regular Session and Second Called Session, 2013. The bills that passed and create new requirements specific to hospitals include:

- HB 740, Regular Session, requires hospitals to provide newborn screening for critical congenital heart disease.

- SB 793, Regular Session, amends language to clarify that a hospital may refer a patient to another program for screening without requiring a transfer agreement and to exempt the hospital from providing the services if a newborn was discharged not more than 10 hours after birth and a referral was made to another program.

- HB 1376, Regular Session, requires that hospital owned and operated freestanding emergency medical care facilities (exempt from licensing requirements of Health and Safety Code, Chapter 254) advertise as emergency rooms and prominently display billing notices and information for the public. The proposed amendments would add a definition of a freestanding emergency medical care facility and add language regarding advertising and billing requirements.

- SB 944, Regular Session, requires that the governing bodies of hospitals that have mental health service units adopt, implement, and enforce procedures for criminal background checks on all prospective personnel considered for assignment to that unit.

- SB 945, Regular Session, requires that hospitals adopt, implement, and enforce policies requiring that photo identification badges for hospital personnel, meet certain specifications.

- SB 1191, Regular Session, relates to the care provided to a sexual assault survivor in an emergency department of a hospital. Language is added that includes requirements related to forensic evidence collection, stabilization, transfers, other responsibilities and mandatory staff training.

One modification was made to maintain hospital compliance with all subchapters of Texas Health and Safety Code, Chapter 171.

Additionally, there is a proposed amendment resulting from provider requests, which are consistent with changes to the federal Centers for Medicare and Medicaid Services (CMS) Conditions of Participation. The time frame required for prescribers in hospitals to date, time, and authenticate/sign verbal orders is changed from 48 hours to 96 hours.

Key Health Measures:

The amendments are expected to positively impact the care provided to patients in Texas hospitals, including newborn infants, sexual assault survivors, and others in need of emergency medical care. These changes will result in further protection of the health and safety of consumers, including babies through additional newborn screening requirements.

Regulatory staff monitor the number of facility surveys conducted, the number of complaint investigations conducted, and the percentage of health facilities found to be in compliance with each rule. These measurements assist DSHS in determining the effectiveness of the rules and resulting facility compliance. Harm and risk of harm, and associated negative outcomes, related to these amendments are reported to DSHS via complaints and facility self-reporting. Additionally, incidental findings of this nature are discovered via routine surveys and inspections. Substantiated negative outcomes are evaluated and reported for Enforcement Unit review and may result in subsequent enforcement action.

Summary of Input from Stakeholder Groups:

An external stakeholder meeting to discuss legislative rule changes and the proposed draft language for hospitals was held on October 25, 2013, during which time proposed rule amendments were shared and discussed. Those in attendance included representatives from urban and rural hospitals, and professional organizations, such as the Texas Hospital Association, Texas College of Emergency Physicians, and the Texas Medical Association. Stakeholders were generally supportive of the proposed rules.

Draft language for the proposed rule amendments, with the exception of those related to SB 1191, was posted on our website before the meeting. Those related to SB 1191 were distributed at the meeting and subsequently posted on the web. Notices were sent to stakeholders in advance, notifying them of the upcoming meeting and rule postings.

Proposed Motion:

Motion to recommend HHSC approval for publication of rules contained in agenda item **#5.c.**

Approved by Assistant Commissioner/Director: Kathryn C. Perkins, R.N., M.B.A. **Date:** 2/12/2014

Presenter: Allison Hughes, R.N. **Program:** Health Care Quality Section **Phone No.:** 512/834-6775

Approved by CCEA: Carolyn Bivens **Date:** 2/12/2014

Title 25. Health Services
Part 1. Department of State Health Services
Chapter 133. Hospital Licensing
Subchapter A. General Provisions
Amendment §133.2
Subchapter C. Operational Requirements
Amendments §133.41 and §133.45

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §133.2, §133.41 and §133.45, concerning the licensing and regulation of hospitals.

BACKGROUND AND PURPOSE

The purpose of the amendments to the hospital licensing rules is to comply with legislative requirements for hospitals passed during the 83rd Legislature, Regular Session, 2013: House Bill (HB) 740, HB 1376, Senate Bill (SB) 793, SB 944, SB 945, and SB 1191; and HB 2 which passed during the Second Called Session of the 83rd Legislature, 2013. A change in the federal Centers for Medicaid and Medicare "Conditions of Participation" resulted in an additional rule amendment.

House Bill 740 amended Health and Safety Code, Chapter 33, and requires hospitals to provide newborn screening for critical congenital heart disease (CCHD).

Senate Bill 793 amended Health and Safety Code, Chapter 47, to clarify the newborn hearing screening requirements in the hospital.

House Bill 1376 added Subchapter H to Health and Safety Code, Chapter 241, to require that hospital owned and operated freestanding emergency medical care facilities (exempt from licensing requirements of Health and Safety Code Chapter 254) advertise as emergency rooms and prominently display billing notices and information for the public.

Senate Bill 944 requires that the governing bodies of hospitals that have mental health service units adopt, implement, and enforce procedures for criminal background checks on all prospective personnel considered for assignment to that unit.

Senate Bill 945 amended Health and Safety Code, Chapter 241, to require hospitals to adopt, implement and enforce policies requiring that photo identification badges for hospital personnel, meet certain specifications.

Senate Bill 1191 amended Health and Safety Code, Chapter 323, relating to emergency services for sexual assault survivors in an emergency department of a hospital.

One modification was made to maintain hospitals' compliance with all subchapters of Health and Safety Code, Chapter 171.

A change to the federal Centers for Medicaid and Medicare "Conditions of Participation" prompted a rule amendment relating to authentication/signing of physician orders.

SECTION-BY-SECTION SUMMARY

Hospital owned and operated freestanding emergency medical care facilities (exempt from licensing requirements of Texas Health and Safety Code Chapter 254) which advertise as emergency rooms are required to prominently display billing notices and information for the public. In response to HB 1376, the proposed rule amendments add a definition of a freestanding emergency medical care facility for these purposes at §133.2(18); and add language regarding advertising and billing requirements at §133.41(e)(1)(E).

Concerning SB 1191, language is added to §133.41(e)(6) that includes requirements related to forensic evidence collection, stabilization, transfers, other responsibilities and mandatory staff training for care of a sexual assault survivor in an emergency room.

In response to SB 793, an amendment to §133.41(f)(4)(D) clarifies that a hospital may refer a patient to another program for hearing screening without requiring a transfer agreement. The addition of §133.41(f)(4)(D)(iv) exempts the hospital from providing the services if a newborn was discharged not more than 10 hours after birth and a referral was made to another program.

The requirement for hospitals to provide newborn screening for CCHD was added to §133.41(f)(4)(E) to comply with HB 740. The statute requires the department to establish test procedures and standards of accuracy for screening, and to describe the required reporting of confirmed cases of CCHD to the department. The new rules concerning these CCHD procedures and requirements are described in §§37.75 -37.79 of this title.

Concerning SB 944, language is added to §133.41(f)(4)(I)(7) which requires the governing bodies of hospitals that have mental health service units adopt, implement and enforce procedures for criminal background checks on all prospective personnel considered for assignment to that unit.

In response to SB 945, an amendment to §133.41(f)(4)(I)(9) requires that hospitals adopt, implement and enforce policies requiring that photo identification badges for hospital personnel meet certain specifications.

Amendments to§133.41(j)(7) and (o)(4)(B)(ii) reflects the change in the time limit from 48 to 96 hours for prescribers in hospitals to date, time, and authenticate/sign verbal orders in response to a change to the federal Centers for Medicaid and Medicare "Conditions of Participation."

Amendment to §133.45(g)(1) to ensure compliance with Health and Safety Code, Chapter 171.

FISCAL NOTE

Renee Clack, Section Director, Health Care Quality Section, has determined that for each year of the first five years that the sections will be in effect, there will not be fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Clack also has determined that there will not be an adverse economic impact on small businesses or micro-businesses required to comply with the sections as proposed because this was determined by interpretation of the rules that small business and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Ms. Clack also has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. Specifically, the rules are expected to positively impact the care provided to patients in Texas hospitals, including newborn infants, sexual assault victims and others in need of emergency medical care.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Allison J. Hughes, Rules Coordinator, Health Care Quality Section, Division of Regulatory Services, Department of State Health Services, P.O. Box 149347, Mail Code 2822, Austin, Texas 78714-9347, (512) 834-6775 or by email to

Allison.hughes@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §241.026, concerning rules and minimum standards for the licensing and regulation of hospitals required to obtain a license under this chapter; and Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendments affect Government Code, Chapter 531; and Health and Safety Code, Chapters 241 and 1001.

Legend: (Proposed Amendment(s))
Single Underline = Proposed new language
[Bold, Print, and Brackets] = Current language proposed for deletion
Regular Print = Current language
(No change.) = No changes are being considered for the designated subdivision

Subchapter A. General Provisions.

§133.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (17) (No change.)

(18) Freestanding emergency medical care facility--A facility that is structurally separate and distinct from a hospital and receives individuals for the provision of emergency care. The facility is owned and operated by the hospital, and is exempt from the licensing requirements of Texas Health and Safety Code, Chapter 254, under §254.052(7) or (8).

(19) **[(18)]** General hospital--An establishment that:

(A) offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals requiring diagnosis, treatment, or care for illness, injury, deformity, abnormality, or pregnancy; and

(B) regularly maintains, at a minimum, clinical laboratory services, diagnostic X-ray services, treatment facilities including surgery or obstetrical care or both, and other definitive medical or surgical treatment of similar extent.

(20) **[(19)]** Governing body--The governing authority of a hospital which is responsible for a hospital's organization, management, control, and operation, including appointment of the medical staff; includes the owner or partners for hospitals owned or operated by an individual or partners.

(21) **[(20)]** Governmental unit--A political subdivision of the state, including a hospital district, county, or municipality, and any department, division, board, or other agency of a political subdivision.

(22) **[(21)]** Hospital--A general hospital or a special hospital.

(23) **[(22)]** Hospital administration--Administrative body of a hospital headed by an individual who has the authority to represent the hospital and who is responsible for the operation of the hospital according to the policies and procedures of the hospital's governing body.

(24) **[(23)]** Inpatient--An individual admitted for an intended length of stay of 24 hours or greater.

(25) **[(24)]** Inpatient services--Services provided to an individual admitted to a hospital for an intended length of stay of 24 hours or greater.

(26) **[(25)]** Intellectual Disability--Significantly sub-average general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.

(27) **[(26)]** Licensed vocational nurse (LVN)--A person who is currently licensed under the Nursing Practice Act by the Board of Nurse Examiners for the State of Texas as a licensed vocational nurse or who holds a valid vocational nursing license with multi-state licensure privilege from another compact state.

(28) **[(27)]** Licensee--The person or governmental unit named in the application for issuance of a hospital license.

(29) **[(28)]** Medical staff--A physician or group of physicians and a podiatrist or group of podiatrists who by action of the governing body of a hospital are privileged to work in and use the facilities of a hospital for or in connection with the observation, care, diagnosis, or treatment of an individual who is, or may be, suffering from a mental or physical disease or disorder or a physical deformity or injury.

(30) **[(29)]** Mental health services--All services concerned with research, prevention, and detection of mental disorders and disabilities and all services necessary to treat, care for, supervise, and rehabilitate persons who have a mental disorder or disability, including persons whose mental disorders or disabilities result from alcoholism or drug addiction.

(31) **[(30)]** Niche hospital--A hospital that:

(A) classifies at least two-thirds of the hospital's Medicare patients or, if data is available, all patients:

(i) in not more than two major diagnosis-related groups; or

(ii) in surgical diagnosis-related groups;

(B) specializes in one or more of the following areas:

(i) cardiac;

(ii) orthopedics;

(iii) surgery; or

(iv) women's health; and

(C) is not:

(i) a public hospital;

(ii) a hospital for which the majority of inpatient claims are for major diagnosis-related groups relating to rehabilitation, psychiatry, alcohol and drug treatment, or children or newborns; or

(iii) a hospital with fewer than 10 claims per bed per year.

(32) **[(31)]** Nurse--A registered, vocational, or advanced practice registered nurse licensed by the Texas Board of Nursing or entitled to practice in this state under Occupations Code, Chapters 301, 304, or 305.

(33) **[(32)]** Outpatient--An individual who presents for diagnostic or treatment services for an intended length of stay of less than 24 hours; provided, however, that an individual who requires continued observation may be considered as an outpatient for a period of time not to exceed a total of 48 hours.

(34) **[(33)]** Outpatient services--Services provided to patients whose medical needs can be met in less than 24 hours and are provided within the hospital; provided, however, that services that require continued observation may be considered as outpatient services for a period of time not to exceed a total of 48 hours.

(35) **[(34)]** Owner--One of the following persons or governmental unit which will hold or does hold a license issued under the statute in the person's name or the person's assumed name:

(A) a corporation;

(B) a governmental unit;

(C) a limited liability company;

(D) an individual;

(E) a partnership if a partnership name is stated in a written partnership agreement or an assumed name certificate;

(F) all partners in a partnership if a partnership name is not stated in a written partnership agreement or an assumed name certificate; or

(G) all co-owners under any other business arrangement.

(36) **[(35)]** Patient--An individual who presents for diagnosis or treatment.

(37) **[(36)]** Pediatric and adolescent hospital--A general hospital that specializes in providing services to children and adolescents, including surgery and related ancillary services.

(38) **[(37)]** Person--An individual, firm, partnership, corporation, association, or joint stock company, and includes a receiver, trustee, assignee, or other similar representative of those entities.

(39) **[(38)]** Physician--A physician licensed by the Texas Medical Board.

(40) **[(39)]** Physician assistant--A person licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners.

(41) **[(40)]** Podiatrist--A podiatrist licensed by the Texas State Board of Podiatric Medical Examiners.

(42) **[(41)]** Practitioner--A health care professional licensed in the State of Texas, other than a physician, podiatrist, or dentist. A practitioner shall practice in a manner consistent with their underlying practice act.

(43) **[(42)]** Premises--A premises may be any of the following:

(A) a single building where inpatients receive hospital services; or

(B) multiple buildings where inpatients receive hospital services provided that the following criteria are met:

(i) all buildings in which inpatients receive hospital services are subject to the control and direction of the same governing body;

(ii) all buildings in which inpatients receive hospital services are within a 30-mile radius of the primary hospital location;

(iii) there is integration of the organized medical staff of each of the hospital locations to be included under the single license;

(iv) there is a single chief executive officer for all of the hospital locations included under the license who reports directly to the governing body and through whom all administrative authority flows and who exercises control and surveillance over all administrative activities of the hospital;

(v) there is a single chief medical officer for all of the hospital locations under the license who reports directly to the governing body and who is responsible for all medical staff activities of the hospital;

(vi) each hospital location to be included under the license that is geographically separate from the other hospital locations contains at least one nursing unit for inpatients which is staffed and maintains an active inpatient census, unless providing only diagnostic or laboratory services, or a combination of diagnostic or laboratory services, in the building for hospital inpatients; and

(vii) each hospital that is to be included in the license complies with the emergency services standards:

(I) for a general hospital, if the hospital provides surgery or obstetrical care or both; or

(II) for a special hospital, if the hospital does not provide surgery or obstetrical care.

(44) **[(43)]** Presurvey conference--A conference held with department staff and the applicant or the applicant's representative to review licensure rules and survey documents and provide consultation prior to the on-site licensure inspection.

(45) **[(44)]** Psychiatric disorder--A clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is typically associated with either a painful syndrome (distress) or impairment in one or more important areas of behavioral, psychological, or biological function and is more than a disturbance in the relationship between the individual and society.

(46) **[(45)]** Quality improvement--A method of evaluating and improving processes of patient care which emphasizes a multidisciplinary approach to problem solving, and focuses not on individuals, but systems of patient care which might be the cause of variations.

(47) **[(46)]** Registered nurse (RN)--A person who is currently licensed by the Texas Board of Nursing for the State of Texas as a registered nurse or who holds a valid registered nursing license with multi-state licensure privilege from another compact state.

(48) **[(47)]** Special hospital--An establishment that:

(A) offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals who are regularly admitted, treated, and discharged and who require services more intensive than room, board, personal services, and general nursing care;

(B) has clinical laboratory facilities, diagnostic X-ray facilities, treatment facilities, or other definitive medical treatment;

(C) has a medical staff in regular attendance; and

(D) maintains records of the clinical work performed for each patient.

(49) **[(48)]** Stabilize--With respect to an emergency medical condition, to provide such medical treatment of the condition necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or that the woman has delivered the child and the placenta.

(50) **[(49)]** Surgical technologist--A person who practices surgical technology as defined in Health and Safety Code, Chapter 259.

(51) **[(50)]** Transfer--The movement (including the discharge) of an individual outside a hospital's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital, but does not include such a movement of an individual who has been declared dead, or leaves the facility without the permission of any such person.

(52) **[(51)]** Universal precautions--Procedures for disinfection and sterilization of reusable medical devices and the appropriate use of infection control, including hand washing, the use of protective barriers, and the use and disposal of needles and other sharp instruments as those procedures are defined by the Centers for Disease Control and Prevention (CDC) of the Department of Health and Human Services. This term includes standard precautions as defined by CDC which are designed to reduce the risk of transmission of blood borne and other pathogens in hospitals.

(53) **[(52)]** Violation--Failure to comply with the licensing statute, a rule or standard, special license provision, or an order issued by the commissioner of state health services (commissioner) or the commissioner's designee, adopted or enforced under the licensing statute. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

Subchapter C. Operational Requirements.

§133.41. Hospital Functions and Services.

(a) - (d) (No change.)

(e) Emergency services. All licensed hospital locations, including multiple-location sites, shall have an emergency suite that complies with §133.161(a)(1)(A) of this title (relating to Requirements for Buildings in Which Existing Licensed Hospitals are Located) or §133.163(f) of this title, and the following.

(1) Organization. The organization of the emergency services shall be appropriate to the scope of the services offered.

(A) - (D) (No change.)

(E) Each freestanding emergency medical care facility shall advertise as an emergency room. The facility shall display notice that it functions as an emergency room.

(i) The notice shall explain that patients who receive medical services will be billed according to comparable rates for hospital emergency room services in the same region.

(ii) The notice shall be prominently and conspicuously posted for display in a public area of the facility that is readily available to each patient, managing conservator, or guardian. The postings shall be easily readable and consumer-friendly. The notice shall be in English and in a second language appropriate to the demographic makeup of the community served.

(2) - (5) (No change.)

(6) Emergency services for survivors of sexual assault. This section does not affect the duty of a health care facility to comply with the requirements of the federal Emergency Medical Treatment and Active Labor Act of 1986 (42 U.S.C. §1395dd) that are applicable to the facility.

(A) The hospital shall develop, implement and enforce policies and procedures to ensure that, except as otherwise provided by subparagraph (C) of this paragraph, after a sexual assault survivor presents to the hospital following a sexual assault, the hospital shall provide **[receives one of the following:]**

[(i)] the care specified under subparagraph (D) **[(B)]** of this paragraph. **[;or]**

[(ii) stabilization and transfer to a health care facility designated in a community-wide plan as the health care facility for treating sexual assault survivors, where the survivor will receive the care specified under subparagraph (B) of this paragraph.]

(B) A facility that is not a health care facility designated in a community-wide plan as the primary health care facility in the community for treating sexual assault survivors shall inform the survivor that:

(i) the facility is not the designated facility and provide to the survivor the name and location of the designated facility; and

(ii) the survivor is entitled, at the survivor's option:

(I) to receive the care described by subparagraph (D) of this paragraph at that facility, subject to subparagraph (D)(i) of this paragraph; or

(II) to be stabilized and to be transferred to and receive the care described by subparagraph (D) of this paragraph at a health care facility designated in a community-wide plan as the primary health care facility in the community for treating sexual assault survivors.

(C) If a sexual assault survivor chooses to be transferred under subparagraph (B)(ii)(II) of this paragraph, after obtaining the survivor's written, signed consent to the transfer, the facility shall stabilize and transfer the survivor to a health care facility in the community designated in a community-wide plan as the health care facility for treating sexual assault survivors, where the survivor will receive the care specified under subparagraph (D) of this paragraph.

(D) **[(B)]** A hospital providing care to a sexual assault survivor shall provide the survivor with the following:

(i) subject to subparagraph (G) of this paragraph, a forensic medical examination in accordance with Government Code, Chapter 420, Subchapter B, when the examination has been requested by a law enforcement agency under Code of Criminal Procedure, Article 56.06, or is conducted under Code of Criminal Procedure, Article 56.065. If a sexual assault survivor is age 18 or older and has not reported the assault to a law enforcement agency, a hospital shall provide this forensic medical examination, when the sexual assault survivor has arrived at the facility not later than 96 hours after the time the assault occurred and has consented to the examination;

(ii) a private area, if available, to wait or speak with the appropriate medical, legal, or sexual assault crisis center staff or volunteer until a physician, nurse, or physician assistant is able to treat the survivor;

(iii) access to a sexual assault program advocate, if available, as provided by Code of Criminal Procedure, Article 56.045;

(iv) the information form required by Health and Safety Code, §323.005;

(v) a private treatment room, if available;

(vi) if indicated by the history of contact, access to appropriate prophylaxis for exposure to sexually transmitted infections; and

(vii) the name and telephone number of the nearest sexual assault crisis center.

(E) **[(C)]** The hospital must obtain documented consent before providing the forensic medical examination and treatment.

(F) **[(D)]** Upon request, the hospital shall submit to the department its plan for the provision of service to sexual assault survivors. The plan must describe how the hospital will ensure that the services required under subparagraph (D) **[(B)]** of this paragraph will be provided.

(i) The hospital shall submit the plan by the 60th day after the department makes the request.

(ii) The department will approve or reject the plan not later than the 120th day following the submission of the plan.

(iii) If the department is not able to approve the plan, the department will return the plan to the hospital and will identify the specific provisions of statutes or rules with which the hospital's plan failed to comply.

(iv) The hospital shall correct and resubmit the plan to the department for approval not later than the 90th day after the plan is returned to the hospital.

(G) A person may not perform a forensic examination on a sexual assault survivor unless the person has the basic training described by Health and Safety Code, §323.0045, or the equivalent education and training.

(H) Basic Sexual Assault Forensic Evidence Collection Training.

(i) A person who performs a forensic examination on a sexual assault survivor must have at least basic forensic evidence collection training or the equivalent education.

(ii) A person who completes a continuing medical or nursing education course in forensic evidence collection that is approved or recognized by the appropriate licensing board is considered to have basic sexual assault forensic evidence training for purposes of this chapter.

(iii) Each health care facility that has an emergency department and that is not a health care facility designated in a community-wide plan as the primary health care facility in the community for treating sexual assault survivors shall develop a plan to train personnel on sexual assault forensic evidence collection.

(I) Sexual Assault Survivors Who Are Minors. This chapter does not affect participating entities of children's advocacy centers under Family Code, Chapter 264, Subchapter E, or the working protocols set forth by their multidisciplinary teams to ensure access to specialized medical assessments for sexual assault survivors who are minors. To the extent of a conflict with Family Code, Chapter 264, Subchapter E, that subchapter controls.

(f) Governing body.

(1) - (3) (No change.)

(4) Responsibilities relating to the medical staff.

(A) - (C) (No change.)

(D) In hospitals that provide obstetrical services, the governing body shall ensure that the hospital implements a newborn audiological screening program, consistent with the requirements of Health and Safety Code, Chapter 47 (Hearing Loss in Newborns), and performs, either directly or through a referral to another program **[transfer agreement]**, audiological screenings for the identification of hearing loss on each newborn or infant born at the facility before the newborn or infant is discharged. These audiological screenings are required to be performed on all newborns or infants before discharge from the facility unless:

(i) (No change.)

(ii) the newborn or infant requires emergency transfer to a tertiary care facility prior to the completion of the screening; **[or]**

(iii) the screening previously has been completed; or

(iv) the newborn was discharged from the facility not more than 10 hours after birth and a referral for the newborn was made to another program.

(E) In hospitals that provide obstetrical services, the governing body shall adopt, implement, and enforce policies and procedures related to the testing of any newborn for critical congenital heart disease (CCHD) that may present themselves at birth. The facility shall implement testing programs for all infants born at the facility for CCHD. In the event that a newborn is presented at the emergency room following delivery at a birthing center or a home birth that may or may not have been assisted by a midwife, the facility shall ascertain if any testing for CCHD had occurred and, if not, shall provide the testing necessary to make such determination. The rules concerning the CCHD procedures and requirements are described in §§37.75 -37.79 of this title.

(F) [**(E)]** The governing body shall determine, in accordance with state law and with the advice of the medical staff, which categories of practitioners are eligible candidates for appointment to the medical staff.

(i) In considering applications for medical staff membership and privileges or the renewal, modification, or revocation of medical staff membership and privileges, the governing body must ensure that each physician, podiatrist, and dentist is afforded procedural due process.

(I) If a hospital's credentials committee has failed to take action on a completed application as required by subclause (VIII) of this clause, or a physician, podiatrist, or dentist is subject to a professional review action that may adversely affect his medical staff membership or privileges, and the physician, podiatrist, or dentist believes that mediation of the dispute is desirable, the physician, podiatrist, or dentist may require the hospital to participate in mediation as provided in Civil Practice and Remedies Code (CPRC), Chapter 154. The mediation shall be conducted by a person meeting the qualifications required by CPRC §154.052 and within a reasonable period of time.

(II) Subclause (I) of this clause does not authorize a cause of action by a physician, podiatrist, or dentist against the hospital other than an action to require a hospital to participate in mediation.

(III) An applicant for medical staff membership or privileges may not be denied membership or privileges on any ground that is otherwise prohibited by law.

(IV) A hospital's bylaw requirements for staff privileges may require a physician, podiatrist, or dentist to document the person's current clinical competency and professional training and experience in the medical procedures for which privileges are requested.

(V) In granting or refusing medical staff membership or privileges, a hospital may not differentiate on the basis of the academic medical degree held by a physician.

(VI) Graduate medical education may be used as a standard or qualification for medical staff membership or privileges for a physician, provided that equal recognition is given to training programs accredited by the Accreditation Council for Graduate Medical Education and by the American Osteopathic Association.

(VII) Board certification may be used as a standard or qualification for medical staff membership or privileges for a physician, provided that equal recognition is given to certification programs approved by the American Board of Medical Specialties and the Bureau of Osteopathic Specialists.

(VIII) A hospital's credentials committee shall act expeditiously and without unnecessary delay when a licensed physician, podiatrist, or dentist submits a completed application for medical staff membership or privileges. The hospital's credentials committee shall take action on the completed application not later than the 90th day after the date on which the application is received. The governing body of the hospital shall take final action on the application for medical staff membership or privileges not later than the 60th day after the date on which the recommendation of the credentials committee is received. The hospital must notify the applicant in writing of the hospital's final action, including a reason for denial or restriction of privileges, not later than the 20th day after the date on which final action is taken.

(ii) The governing body is authorized to adopt, implement and enforce policies concerning the granting of clinical privileges to advanced practice nurses and physician assistants, including policies relating to the application process, reasonable qualifications for privileges, and the process for renewal, modification, or revocation of privileges.

(I) If the governing body of a hospital has adopted, implemented and enforced a policy of granting clinical privileges to advanced practice nurses or physician assistants, an individual advanced practice nurse or physician assistant who qualifies for privileges under that policy shall be entitled to certain procedural rights to provide fairness of process, as determined by the governing body of the hospital, when an application for privileges is submitted to the hospital. At a minimum, any policy adopted shall specify a reasonable period for the processing and consideration of the application and shall provide for written notification to the applicant of any final action on the application by the hospital, including any reason for denial or restriction of the privileges requested.

(II) If an advanced practice nurse or physician assistant has been granted clinical privileges by a hospital, the hospital may not modify or revoke those privileges without providing certain procedural rights to provide fairness of process, as determined by the governing body of the hospital, to the advanced practice nurse or physician assistant. At a minimum, the hospital shall provide the advanced practice nurse or physician assistant written reasons for the modification or revocation of privileges and a mechanism for appeal to the appropriate committee or body within the hospital, as determined by the governing body of the hospital.

(III) If a hospital extends clinical privileges to an advanced practice nurse or physician assistant conditioned on the advanced practice nurse or physician assistant having a sponsoring or collaborating relationship with a physician and that relationship ceases to exist, the advanced practice nurse or physician assistant and the physician shall provide written notification to the hospital that the relationship no longer exists. Once the hospital receives such notice from an advanced practice nurse or physician assistant and the physician, the hospital shall be deemed to have met its obligations under this section by notifying the advanced practice nurse or physician assistant in writing that the advanced practice nurse's or physician assistant's clinical privileges no longer exist at that hospital.

(IV) Nothing in this clause shall be construed as modifying Subtitle B, Title 3, Occupations Code, Chapter 204 or 301, or any other law relating to the scope of practice of physicians, advanced practice nurses, or physician assistants.

(V) This clause does not apply to an employer-employee relationship between an advanced practice nurse or physician assistant and a hospital.

(G) **[(F)]** The governing body shall ensure that the hospital complies with the requirements concerning physician communication and contracts as set out in Health and Safety Code, §241.1015 (Physician Communication and Contracts).

(H) **[(G)**] The governing body shall ensure the hospital complies with the requirements for reporting to the Texas Medical Board the results and circumstances of any professional review action in accordance with the Medical Practice Act, Occupations Code, §160.002 and §160.003.

(I) **[(H)]** The governing body shall be responsible for and ensure that any policies and procedures adopted by the governing body to implement the requirements of this chapter shall be implemented and enforced.

(5) - (6) (No change.)

(7) Services. The governing body shall be responsible for all services furnished in the hospital, whether furnished directly or under contract. The governing body shall ensure that services are provided in a safe and effective manner that permits the hospital to comply with applicable rules and standards. At hospitals that have a mental health service unit, the governing body shall adopt, implement, and enforce procedures for the completion of criminal background checks on all prospective employees that would be considered for assignment to that unit.

(8) (No change.)

(9) Photo identification badge. The governing body shall adopt a policy requiring employees, physicians, contracted employees, and individuals in training who provide direct patient care at the hospital to wear a photo identification badge during all patient encounters, unless precluded by adopted isolation or sterilization protocols. The badge must be of sufficient size and worn in a manner to be visible and must clearly state: (1) at minimum the individual's first or last name; (2) the department of the hospital with which the individual is associated; (3) the type of license held by the individual, if applicable under Title 3, Occupations Code; and (4) the provider's status as a student, intern, trainee, or resident, if applicable.

(g) - (i) (No change.)

(j) Medical record services. The hospital shall have a medical record service that has administrative responsibility for medical records. A medical record shall be maintained for every individual who presents to the hospital for evaluation or treatment.

(1) - (6) (No change.)

(7) All verbal orders must be dated, timed, and authenticated within 96 **[48]** hours by the prescriber or another practitioner who is responsible for the care of the patient and has been credentialed by the medical staff and granted privileges which are consistent with the written orders.

(A) - (C) (No change.)

(8) - (12) (No change.)

(k) - (n) (No change.)

(o) Nursing services. The hospital shall have an organized nursing service that provides 24-hour nursing services as needed.

(1) - (3) (No change.)

(4) Drugs and biologicals. Drugs and biologicals shall be prepared and administered in accordance with federal and state laws, the orders of the individuals granted privileges by the medical staff, and accepted standards of practice.

(A) (No change.)

(B) All orders for drugs and biologicals shall be in writing, dated, timed, and signed by the individual responsible for the care of the patient as specified under subsection (f)(6)(A) of this section. When telephone or verbal orders must be used, they shall be:

(i) (No change.)

(ii) dated, timed, and authenticated within 96 **[48]** hours by the prescriber or another practitioner who is responsible for the care of the patient and has been credentialed by the medical staff and granted privileges which are consistent with the written orders; and

(iii) (No change.)

(C) (No change.)

(5) - (8) (No change.)

(p) - (y) (No change.)

§133.45. Miscellaneous Policies and Protocols.

(a) - (f) (No change.)

(g) Abortion. A hospital that performs abortions shall adopt, implement and enforce policies to:

(1) ensure compliance with HSC, Chapter 171; **[Subchapters A and B (relating to Abortion and Informed Consent)]**

(2) (No change.)

(h) (No change.)